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MILEF, ELDA G

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/904,741  
Filing Date: July 13, 2001  
Appellant(s): BROCK, RONALD G.

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Steve P. Hassid  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the supplemental appeal brief filed 2/6/2009 appealing from the 2nd or Subsequent Examiner's Answer.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,857,174	Dugan	1-1999
6,609,118	Khedkar et. al.	8-2003
5,680,305	Apgar	10-1997

"Three More Companies Become WebLink Wireless Enterprise Solutions Partners;  
Datamatic, LynkUs and VoiceLink Join 19 Other Companies in Wireless Data Effort"  
PR Newswire. New York, May 4, 2000. pg. 1.

### **(9) Grounds of Rejection**

In light of the amendments provided by the appellant in the supplemental Appeal Brief, the rejection under 35 USC § 101 is withdrawn.

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1,2, 4, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dugan (U.S. Patent No. 5,857,174) in view of Khedkar et al. (hereinafter Khedkar U.S. Patent No. 6,609,118).

**Re claim 1:** Dugan discloses:

a real estate database storing data for each of said plurality of real estate properties, said data comprising at least one of address data, ownership data, physical

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characteristics data, size data, geographic location data and monetary value data wherein said real estate database further stores an actual monetary value for each of said plurality of real estate properties, a plurality of monetary value-effective characteristics generally associated with real estate properties-see ("database") col. 6 lines 19-65, ("The database 24 stores each property as a separate searchable record. The sales data for each property can then be compared with other sales for an ongoing indication of market values by each property, class, size, category, or other similar factors...The weights or preferences are preferably arranged into five categories 110, including Location 112...Facilities 116...")-see col. 7 lines 4-32, col. 8 lines 11-18,

an interface system for enabling a system user to input a request for a comparison of at least a portion of said data of said at least two of said plurality of real estate properties, said request comprising information sufficient to identify said at least two of said plurality of real estate properties, wherein said request comprises the selection of physical rating parameter and/or location rating parameter ("The buyer is able to indicate the relative values by selecting amongst the range of allowed IPS values for each category 110.")-see col. 7 lines 36-65, , col.9 lines 44-48,col. 10 lines 65-col. 11 line 5, col. 12 lines 11-24;

a processor which uses said information to obtain said comparison of at least a portion of said data of said at least two of said plurality of real estate properties, wherein said processor is configured to provide a physical rating and a location rating for each of said at least two of said plurality of real estate properties; -see col.9 lines 20-62, col. 11, lines 5-13;

and a delivery system for providing to said system user said comparison of at least a portion of said data of said at least two of said plurality of real estate properties, comparison comprises, for each of said at least two of said plurality of real estate properties, said physical rating, said location rating, said actual monetary value; and said market standard monetary value; and wherein said physical rating parameter and/or said location rating parameter are used to select the at least two of said plurality of real estate properties provided in said comparison.-see col. 7 lines 60-65, col. 8 line 50- col. 9 line 3, col. 11 lines 6-12m col. 12 lines 46-52, col.14.

Although Dugan discloses categories of elements and an IPS value used to arrive at an appraised value of the subject property-see cols. 4 and 5 and that dollar adjustments used to reduce or increase the value of a subject property based on important attributes based on general distinctions of time, location and physical characteristics has been done by appraisers in the past-see Background of the Invention col.1, Dugan does not specifically disclose that a standard monetary value for each of said plurality of monetary value-affecting characteristics is applied and wherein said processor is configured to use at least one of said standard monetary value for each of said plurality of monetary value-affecting characteristics to obtain a market standard monetary value for each of said at least two of said plurality of real estate properties. Khedkar, however teach ("FIG. 11 shows possible adjustments 210 (in thousands of dollars to a comparable's price, as a function of the different number of bathrooms between the subject and comparable property...")-see col. 10 lines 32-59, and cols. 8-13. It would have been obvious to one having ordinary skill in

the art at the time the invention was made to modify Dugan to include applying a standard adjustment value pertaining to a particular attribute as taught by Khedkar in order to determine a measurement of similarity between each comparable property and the subject property.

**Re claim 2:** Dugan discloses:

an input system configured to permit the inputting of real estate property data into said database.-see col. 6, lines 39-44 and col. 9, lines 10-19.

**Re claims 4:** Dugan do not specifically disclose wherein the comparison further comprises a list presented to said system user of each said standard monetary value used by said processor to obtain said market standard monetary value for each of said at least two of said plurality of real estate properties. Khedkar however, teaches a system wherein ("Each property's sales price is adjusted to better reflect the subject property's value by using a rule set that uses additional property attributes, such as for example, construction quality, conditions, pools, fireplaces, etc.")-see cols. 8-10, and Fig. 12 and related text.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Dugan to include a display including the monetary adjustments made to a comparable property's sale price to arrive at an adjusted price as taught by Khedkar in order for the user to view the factors influencing the differences in the valuation of the properties.

**Re claim 57:** Dugan discloses selection of unit type for use in searching real estate database-see fig, 6a (136) Residence and Fig. 7a Rural Residential Acreage.

2. Claims 41-45, 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dugan in view of Apgar (U.S. Patent No. 5,680,305).

**Claim 41:** Dugan disclose a plurality of physical factors for each of a plurality of real estate properties (“It is another object of the invention to provide a real estate appraisal method that sets standardized, objective, and well-defined factors used to appraise property so as to be easily understood and applied...”)-see col. 4 lines 53-67, Figs. 6 (a,c,e,g,i,k) –see FACILITIES and IMPROVED;

a weight indicator associated with each of said plurality of physical factors; and a factor score associated with each of said plurality of physical factors -see “I.P.S.” values), Figs. 6 (a,c,e,g,i,k)and col. 7 lines 14-40;

a factor score associated with each of said plurality of physical factors (“After the heading information, six categories 110 are listed, including the five categories previously described with respect to evaluation slide 26...Next to each category 110 is a list of illustrative competitive desirability factors 125. These desirability factors 125 allow the appraiser or buyer that is filling out the form, to have some indication as to what attributes of the comparable property is to be assessed for each particular category 110”)-see col. 9 lines 39-48. In order to arrive at an I.P.S. value for each category (set) of physical factors, the user in Dugan must evaluate the property based on the desirability factors 125. Therefore, it is obvious from the teachings of Dugan, that the desirability factors must be assigned some sort of score or weight in order for the user to derive a total IPS value for the particular category (set).



Dugan disclose dividing said plurality of physical factors into a plurality of sets each having a number of factors, said number comprising at least two, wherein said weight indicators or each of said plurality of factors in said each of said plurality of sets are equal. (The Facilities and Improved sets are made up of a number of physical attributes which are considered when determining the IPS value. The I.P.S value taught by Dugan in each set (Facilities or Improved) are the same for that set, for example in Figure 6(a), the total IPS value for the category Facilities is 15 and the category Improved is 35.).

The remaining limitations are rejected as in claim 1 above.

**Claim 42** has similar limitations found in claim 41 above, and therefore is rejected by the same art and rationale.

**Re claim 43:** Dugan does not explicitly disclose:

multiplying each said factor scores associated with each of said plurality of physical factors of said one of said plurality of real estate properties by said weight indicator associated with said each of said plurality of physical factors to obtain a plurality of weighted factor scores. Apgar however, teaches a system and method for evaluating real estate including (Indicator means a quantitative measure of a particular factor affecting Real Estate. The score is generally determined by five indicators...Weighting Factor is used to denote an empirically determined adjustment for each indicator..."-see cols. 2-3, also col. 8, lines 44-48 , cols. 7-15(Amount, Price, Grade), fig. 21, col.16, lines 49-60, col.21, lines 57-63.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Dugan to include multiplying each factor score for each indicator to obtain a weighted score and adding the weighted indicators to arrive a total weighted indicator as taught by Apgar in order for the user to gain an understanding of what factors influenced the valuation of real estate property.

Although Apgar discloses weighted scores for each indicator and a total weighted score as a rating in Fig. 21, Apgar does not specifically disclose adding said average scores for each of said plurality of sets to obtain a total weighted score. Official Notice is taken that it is old and well known in the art of Finance that weighted averages are commonly used to arrive at a comprehensive number representing proportions of multiple elements. For example, weighted averages are commonly used in the valuing the cost of capital. Therefore, It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Apgar to include calculating a weighted average score in order to provide the user with another means of determining a value to be used as a total indicator.

**Re claim 44:** Dugan discloses:

wherein said processor is further configured to obtain said physical rating by summing said weighted indicators to obtain a total weight indicator. Dugan shows ("The total possible IPS value for any property is 100...")-see col. 5, lines 3-4, and see Figs. 6a, 6c, 6g, 6i,6k ("Total Competitive standard's ratio = (100)";

dividing said total weighted score by said total weight indicator . -see Dugan Fig. 7i, ("Total Standard Units 79%, 59%, 92%").

**Re claim 45:** Dugan and Apgar do not specifically disclose converting said physical rating to an alphabetic score. Official notice is taken that it is old and well known in the art that converting a numerical score to an alphabetical score is common. For example, it is common for teachers to grade tests using a numerical score and then convert the score into a corresponding alphabetic score i.e. 90-100=A. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Apgar to include converting a numerical rating to an alphabetical one in order to provide a rating that may be easier for the user to understand and make a quick association to its meaning.

**Claim 54** has similar limitations found in claim 41 above, and therefore is ejected by the same art and rationale.

**Re claim 55:** Dugan discloses wherein said delivery system provides to said user a property comparison report comprising: a comparison of physical and location ratings for at least two of said plurality of real estate properties-see Figs. 6m, 7i and related text.

**Re claim 56:** Dugan does not disclose wherein said property comparison report further comprises a comparison of market standard rental rates along with the basis upon which the market standard rental rates were calculated. Apgar however, teaches (Calculate the average Rent/SF for each SIC code....)-see col. 9 lines 5-39 and cols. 2-6 (rent and SIC), col. 8. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Dugan to include a calculation of

average rent as taught by Apgar in order assist a user in making real estate decisions based on comparable real estate rentals as a factor.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dugan in view of Three (*Three More Companies Become WebLink Wireless Enterprise Solutions Partners: Datamatic, LynkUs and VoiceLink Join 19 Other Companies in Wireless Data Effort*. Pr Newswire, New York: May 4, 2000. pg.1).

**Re claim 3:** Dugan does not disclose:

a subscriber database for storing data relating to subscribers to said system. Three however, shows ('LynkUs.com is a developer of Web-based services specifically for wireless subscribers. Through the ESP program, LynkUs plans to develop wireless data content for several industries. One key project, for the real estate industry, will provide wireless links to the Multiple Listing Service so realtors can access listings from their wireless devices, even when they're out of the office.")-see p.2, para. 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Dugan to include allowing only subscribers to access a database such as the Multiple Listing Service shown by Three in order to provide a secure and controlled means of accessing data.

#### **(10) Response to Argument**

The rejection of claims 6-17 and 51-53 under 35 U.S.C. §101 has been withdrawn due to the cancellation of claims 6-17 and 51-53 in the supplemental appeal brief filed by the appellants on 2/6/2009.

The rejection of claim 56 under 35 U.S.C. §112 has been withdrawn due to the after final amendment entered for purposes of appeal on 4/12/2007.

The appellant argues that Dugan and Khedkar do not disclose “wherein said processor is configured to use at least one of said standard monetary value for each of said plurality of monetary value-effecting characteristics to obtain a market standard monetary value for each of said at least two of said plurality of real estate properties”. The appellant further argues that the “adjustments” disclosed in Khedkar are made with respect to differences that depend upon the particular subject property selected which cannot be used to obtain the “market standard monetary value” as claimed, it is noted that the features upon which applicant relies (i.e., the market standard monetary value does not depend upon the selection of any particular property) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, the appellant discloses a definition of “Market Standard Value” or MSV on page 17 (IV.) of the specification, as follows: MSVs define an area's property value in context with other areas so that a more accurate comparison of the values of properties may be made...the process for assessing a subject property's MSV comprises selecting a plurality of value-effecting characteristics that are generally associated with real estate properties of the type similar to the subject properties (step 80). Each value effecting characteristic is then assigned a standard monetary value, which can be either a positive or negative value (step 81).

In response to the appellant's argument that Khedkar does not provide a standard monetary value. The appellant broadly defines the phrase "standard monetary value" in the specification on page 17 lines 20 to 22, as "Each value effecting characteristic is then assigned a standard monetary value, which can be either a positive or negative value (step 81)."

Dugan discloses a real estate appraisal method using an ideal point system (IPS) for various groups of desirability factors. The appraisal is based upon a comparison of the total points value for each comparable property and the total IPS value of the subject property. The points are ultimately used to determine an appraised value in a monetary standard for the subject property.

The Khedkar reference was cited because of its teaching of a monetary value applied to attributes such as living area, lot size, number of bedrooms, etc. Khedkar teaches a method and system for automated property valuation wherein ("Each property's sales price is adjusted to better reflect the subject property's value by using a rule set that uses additional property attributes as for example, construction quality, conditions, pools, fireplaces, etc.")-see col. 8 lines 53-56, and ("For example, Fig. 10 illustrates sample adjustment rules 200, which are triggered by differences between the subject property's and comparable's attributes. Fig. 11 shows possible adjustments 210 (in thousands of dollars) [standard monetary values] to a comparable's price, as a function of the different number of bathrooms between the subject and the comparable property. The adjustments taught by Khedkar are based on attributes can be positive or

negative values. The adjustments are applied to attributes such as the number of bedrooms, number of bathrooms, lot size, living area, etc. See Khedkar, Figures 11-12.

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to the appellant's argument that Dugan and Khedkar do not disclose two or more properties, the appellant's attention is directed to Fig. 6m and col. 13 line 51 to col. 14 line 43 wherein Dugan discloses an analysis that determines an appraisal values for comparable properties as well as for the subject property. Dugan specifically discloses ("Preferably, the appraisal of the subject property is based upon the analysis of from three to five comparable properties...")-see col. 14 lines 34-44.

In response to the argument concerning claim 41 (appellant cancelled claim 6) and that Dugan does not teach or suggest that each of the desirability factors in a category be given a factor score to which an equal weight will be applied. The appellant claims the following limitation: "wherein said weight indicators of each of said plurality of physical factors in said each of said plurality of sets are equal." Dugan discloses ("However, the categories 110 and weights may be adjusted to better account for the

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various real estate markets, such as commercial, retail and residential properties , as well as for various locations such as rural, suburban, and urban properties...")-see col. 13 line 50 to col. 14, and Figs. 6a-6m, 7a-7i. It is obvious from the teachings of Dugan that the categories relating to physical factors, i.e. Facilities and Improved could be assigned any weight relevant to the appraised property e.g., land or structure, that ultimately equals and IPS value of 100 thereby allowing the user to obtain solely a physical rating. For example, Figs. 6a-6m concern appraisals of residences and therefore the IPS weights are applied to categories most relevant to the analysis of a residential property. Figures 7a-7i concern appraisals of rural residential acreage and the IPS weights are applied to reflect the analysis of factors most relevant to rural residential acreage.

In response to the appellant's argument regarding claim 56 and Apgar does not teach market standard rental rates. Apgar teaches calculating an average rent per square foot for each standard industry classification code. The "average rental rate" is the market standard rental rate.

Additionally, although the argued elements may be found as examples and/or embodiments in the specification, they were not claimed explicitly in the disputed claim(s). Nor was the terminology used in the disputed claim(s) defined in the specification to require these limitations. A reading of the specification provides no evidence to indicate that these limitations must be imported into the claims to give meaning to disputed terms. Therefore, although the claims are interpreted in light of the



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specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993) and MPEP §2111.01.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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